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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,321	07/01/2003	Karl W. Schakel	Schakel-NonProv	7710
33549	7590	11/02/2006	EXAMINER	
SANTANGELO LAW OFFICES, P.C. 125 SOUTH HOWES, THIRD FLOOR FORT COLLINS, CO 80521			WARE, DEBORAH K	
			ART UNIT	PAPER NUMBER

1651

DATE MAILED: 11/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/612,321

Applicant(s)

SCHAKEL ET AL.

Examiner

Deborah K. Ware

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-12, 14-18, 20-26, and 28-36 is/are pending in the application.
- 4a) Of the above claim(s) 31-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-12, 14-18, 20-26 and 28-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Claims 1-4, 6-12, 14-18, 20-26, and 28-36 are pending.

Response to Amendment

The amendment filed August 8, 2006, has been received and entered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Drawings

The drawings filed August 8, 2006, have been received and will be reviewed.

Election/Restrictions

Applicant's election without traverse of Group I, claims 1-30, in the reply filed on February 13, 2006, has been acknowledged. Claims 31-36 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention(s), there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on February 13, 2006.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-4, 6-12, 14-18, 20-26, and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGrew et al (US 6949264) in view of Ramackers (US 6506413), Blauel et al (US 5536523), Hart (6133317) and Yura et al (US 7005513).

Claims are drawn to health enhancement system (i.e. nutraceutical) comprising ingesting varied amounts of flax oil, omega-3 oil, shark cartilage, montmorillonite minerals, vitamins C and E, beta carotene, various Heritage consumer health products, Cat's Claw, essiac tea and hydrazine sulfate.

McGrew et al teach health enhancement system comprising ingesting varied amounts of vitamins C and E, Cat's Claw, green tea, Heritage consumer products and minerals (note column 7, line 5, column 9, line 16-17 and column 2 of page 4, lines 17-20, and column 9, line 19, respectively). Note cancer treatment system disclosed at column 7, line 7.

Ramackers teaches ingesting flax oil, omega-3 oil and montmorillonite mineral nutraceutical treating system for diseases and syndromes to enhance the health.

Note the abstract. Also note column 3, line 3 and column 9, line 15 and 16 and 24.

Blauel et al teach a healthy spread which contains beta carotene and flax oil, and omega-3 oil, note column 1, lines 40-55, column 2, line 35, column 4, line 31 and column 5, line 16.

Hart teaches a therapeutic and nutritional and natural herbal alternative cancer treatment system which includes Essiac, note page 2, column 2, lines 1-7.

Yura et al teach ingesting an organic drug system for enhancing health comprising shark cartilage and hydrazine sulfate, note column 7, lines 49 and 50, and the entire abstract.

The claims differ from McGrew et al in that specific Heritage consumer products, such as Heritage Gold, Platinum, Complete and Osteoguard, as well as montmorillonite, beta carotene, flax oil, omega-3 oil, shark cartilage, hydrazine sulfate, essiac tea ingredients are not disclosed.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was filed to combine the cited references of McGrew et al, Ramackers et al, Blauel et al, Hart and Yura et al in order to provide for a health enhancement system comprising ingesting each of these disclosed ingredients in varied optimal amounts for enhancing health as each are disclosed in the cited prior art for enhancing health which is the identical purpose as claimed. Furthermore, a cancer treatment system is disclosed as well to be ingested. Also to optionally include

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cruciferous vegetables is clearly an obvious modification of the cited prior art since these ingredients as disclosed by the cited prior art; and each disclosed to be nutritionally effective and to add vegetables to a diet for a health enhancement system is within the skill of an artisan. Further, to vary the amounts to optimize a health enhancement system is within the skill of an ordinary artisan. The claims are *prima facie* obvious in the absence of persuasive evidence to the contrary.

Response to Arguments

Applicant's arguments filed August 8, 2006, have been fully considered but they are not persuasive. The argument that each of the ingredients are not disclosed is not deemed persuasive since McGrew et al teach health enhancement system comprising ingesting varied amounts of vitamins C and E, Cat's Claw, green tea, Heritage consumer products and minerals (note column 7, line 5, column 9, line 16-17 and column 2 of page 4, lines 17-20, and column 9, line 19, respectively).

Note cancer treatment system disclosed at column 7, line 7. All of the HERITAGE Trademark products claimed and their respective ingredients now newly claimed herein are intrinsic to the Heritage consumer products and minerals disclosed by the cited prior art. Therefore, the ingredients are disclosed in the cited references.

Therefore, a *prima facie* case based upon these teachings has been established. Further, since each of the claimed elements are disclosed in combination as explained above, one of skill would have been motivated to combine these to form health enhancement system. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning or "obvious to

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try", it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. S

So long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The knowledge of these Trademark products is evidence that the compounds and ingredients are well known, and within the level of ordinary skill in the art at the time the claimed invention was made and not knowledge gleaned only from the instant Applicants. Thus, a prima facie case of obviousness has been well established on the record and the rejection is sustained.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

No claims are allowed.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is 571-272-0924. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Deborah K. Ware
October 28, 2006



DAVID M. NAFF
PRIMARY EXAMINER
ART UNIT 128/657